

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEREMIAH FOLSOM HERBERT,

Plaintiff,

-against-

LIEUTENANT N. KORINES, 7am to 3pm;
CORRECTION OFFICER D. TRAGIS. 7am to
3pm Tour Shift; CORRECTION OFFICER
SERINO, 7am to 3pm Tour Shift; CORRECTION
OFFICER “JOHN DOE,” Court Transport 10/4/23,
7am to 3pm Shift; CORRECTION OFFICER
MELDOZA “JOHN DOE,” Court Transport
Officer 7am to 3pm Tour Shift; MARK MILLER,
Superintendent

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 04/19/2024

23-CV-9529 (NSR)

ORDER OF SERVICE

NELSON S. ROMÁN, United States District Judge:

Plaintiff, who currently is incarcerated at Attica Correctional Facility, brings this action, *pro se*, under 42 U.S.C. § 1983, alleging that, while he was incarcerated at Green Haven Correctional Facility, Defendants violated his constitutional rights. By order dated November 1, 2023, the Court granted Plaintiff’s request to proceed *in forma pauperis* (“IFP”), that is, without prepayment of fees.¹

DISCUSSION

A. Service on Named Defendants

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.² *Walker v. Schult*, 717 F.3d. 119, 123 n.6

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

² Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have effected service until the Court reviewed the complaint and ordered that any

(2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

To allow Plaintiff to effect service on Defendants Lieutenant N. Korines, Correction Officer D. Tragis, Correction Officer Serino, and Superintendent Mark Miller through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for Defendants. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon Defendants.

If the complaint is not served within 90 days after the date summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service).

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

B. John Doe Defendants

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying a defendant. 121 F.3d 72, 76 (2d Cir. 1997). In the complaint, Plaintiff supplies sufficient information to permit the New York State Department of Corrections and Community Supervision to identify the two court transport officers involved in the alleged deprivation of Plaintiff’s rights on October 4, 2023. It is therefore ordered that the New York State Attorney

summonses be issued. The Court therefore extends the time to serve until 90 days after the date any summonses issue.

General, who is the attorney for and agent of the New York State Department of Corrections and Community Supervision, must ascertain the identity and badge number of each John Doe whom Plaintiff seeks to sue here and the addresses where the Defendants may be served. The New York State Attorney General must provide this information to Plaintiff and the Court within sixty days of the date of this order.

Within thirty days of receiving this information, Plaintiff must file an amended complaint naming the John Doe Defendants. The amended complaint will replace, not supplement, the original complaint. An amended complaint form that Plaintiff should complete is attached to this order. Once Plaintiff has filed an amended complaint, the Court will screen the amended complaint and, if necessary, issue an order directing the Clerk of Court to complete the USM-285 forms with the addresses for the named John Doe Defendants and deliver all documents necessary to effect service to the U.S. Marshals Service.

C. Local Civil Rule 33.2

Local Civil Rule 33.2, which requires defendants in certain types of prisoner cases to respond to specific, court-ordered discovery requests, applies to this action. Those discovery requests are available on the Court's website under "Forms" and are titled ["Plaintiff's Local Civil Rule 33.2 Interrogatories and Requests for Production of Documents."](#) Within 120 days of service of the complaint, Defendants must serve responses to these standard discovery requests. In their responses, Defendants must quote each request verbatim.³

³ If Plaintiff would like copies of these discovery requests before receiving the responses and does not have access to the website, Plaintiff may request them from the Pro Se Intake Unit.

CONCLUSION

The Clerk of Court is instructed to issue summonses for Defendants Lieutenant N. Korines, Correction Officer D. Tragis, Correction Officer Serino, and Superintendent Mark Miller, complete the USM-285 form with the address for Defendants, and deliver all documents necessary to effect service to the U.S. Marshals Service.

The Clerk of Court is directed to mail a copy of this order and the complaint to the New York State Attorney General at: 78 Liberty Street, New York, New York 10007.

Local Civil Rule 33.2 applies to this action.

The Clerk of Court is further directed to mail a copy of this Order and an information package to Plaintiff.

SO ORDERED.

Dated: April 19, 2024
White Plains, New York

A handwritten signature in blue ink, appearing to read 'N. Roman', is written over a horizontal line.

NELSON S. ROMÁN
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

1. Lieutenant N. Korines
Green Haven Correctional Facility
594 Route 216
Stormville, New York 12582
2. Correction Officer D. Tragis
Green Haven Correctional Facility
594 Route 216
Stormville, New York 12582
3. Correction Officer Serino
Green Haven Correctional Facility
594 Route 216
Stormville, New York 12582
4. Superintendent Mark Miller
Green Haven Correctional Facility
594 Route 216
Stormville, New York 12582